IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No.16 of 2002
Date of decision: 9.11.2006

**The Commissioner of Income-tax, Patiala**

**..Applicant**
through
Dr. N.L.Sharda, Advocate

**v.**

**M/s Sharat Kumar & Co.**

..**Respondent**
through
Nemo

CORAM:

Hon'ble Mr.Justice Ajay Kumar Mittal
Hon'ble Mr.Justice Rajesh Bindal

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

**Rajesh Bindal, J.**

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for short, `the Tribunal'), arising out of its order dated 26.6.1998 in I.T.A. No. 223 (ASR)/1992, in respect of assessment year 1990-91:

> "Whether on the facts and in the circumstances of the case, the I.T.A.T. was right in law in applying the yield rate 31.75% as against 32% applied by the A.O. And confirmed by the CIT(A) in the case of M/s Gheru Lal Bal Chand ?"

Briefly, the facts are that the Assessing Officer, during the course of assessment, made additions on account of low yield of cotton shown by the assessee. The assessee had shown the yield at 31.467%, whereas according to the Assessing Officer, the other parties had shown the same at 32.5%. In further appeal before the Commissioner of Income-tax (Appeals), the yield was increased from 31.467% to 31.75%, which order was upheld by the Tribunal.

The Tribunal, while referring to various comparable cases of the private parties, held that the yield shown by the assessee in the present case was

comparable with the private parties in the vicinity. As far as the case of another assessee, namely, Mahabir Cotton Company is concerned, the same was distinguished for the reason that the facts in that case were different as the case did not pertain to that area and further relevant comparative date had not been placed on record by the departmental representative which could be relied upon. The case of M/s Gheru Mal Bal Chand, where the yield was shown at 32%, was clearly distinguished for the reason that during the year when yield of 32% was assessed in that case, the total turnover of Narma was 1303 quintals, whereas in the case of the assessee, it was around 45,000 quintals. Further, the assessee has compared his case with the government agencies like Cotton Corporation of India and Markfed, where the yield in the area was fixed at 31.498% and 31.431%, respectively. In this factual matrix, learned counsel for the Revenue was unable to point out any material on record which had either not been considered by the Tribunal or had been misread while confirming the order passed by the CIT(A). This being the position, we are unable to substitute our own opinion in the matter of estimation. Accordingly, the question referred is answered against the Revenue and in favour of the assessee.

The reference is disposed of in the manner indicated above.

**( Rajesh Bindal )**
**Judge**

**(Ajay Kumar Mittal)**
**Judge**

9.11.2006
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